IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 93/2005

Mr. Bijou de Romeo Lourdes
Godinho, Nagvaddo,
Betalbatim, Salcete, Goa. ..... Petitioner.

V/s.

1. State of Goa,
   through the chief Secretary,
   Secretariat, Panaji, Goa.

2. Director of Panchayats,
   Junta House, Panaji, Goa.

3. Sarpanch, Village Panchayat of
   Betalbatim, Salcete, Goa.

4. Village Panchayat of Betalbatim
   Salcete, Goa.

5. Mr. Filipinho Goes,
   r/o. H.No.74(old),
   Nagvaddo, Betalbatim,
   Salcete, Goa. ..... Respondents.

Shri J.E. Coelho Pereira, Senior Advocate with Mr. V. Korgaonkar, Advocate for the Petitioner.

Shri C. A. Coutinho, Advocate for the respondents No.3 and 4.

Shri S. S. Kantak, Advocate for the respondent No.5.

CORAM : R. M. LODHA, J.

DATE : 2ND SEPTEMBER, 2005.

ORAL JUDGMENT :

Heard. It appears from the proceedings that all the respondents have been served with show cause notice. The respondents No.3 and 4 are represented by Mr. C. A. Coutinho and the respondent No.5 is represented by Mr. S. S. Kantak. None appears for the respondents No.1 and 2.

2. Rule. Heard finally at this stage.

3. The respondent No.5 herein had preferred an appeal before the Additional Director of Panchayats, Panaji aggrieved by the order of the Village Panchayat directing the present respondent No.5 to demolish the construction which in the opinion of Village Panchayat is unauthorised. In the appeal filed by the respondent No.5 that is pending before the Additional Director of Panchayats, an application was made by the present petitioner for his impleadment. The said application has been rejected by the Additional Director of Panchayats on 18.11.2004. Aggrieved thereby, the present petitioner has filed the writ petition.

4. There appears to be no dispute that the petitioner is the owner of the property bearing Survey No. 71/1 of the Village Betalbatim. The respondent No.5 who is in occupation of the said house has allegedly undertaken the work of casting slab/RCC roof. The petitioner made a complaint to the Village Panchayat for the unauthorised construction raised by the respondent No.5. Acting on the said complaint, the notice was issued to the respondent No.5 under Section 66(3)(b) of the Goa Panchayat Raj Act, 1994 and after hearing him, the order of demolition has been passed. As already indicated above, aggrieved thereby the respondent No.5 has preferred the appeal before the Additional Director of Panchayats.

5. The aforesaid facts clearly indicate that the presence of the petitioner, who is the owner of the property shall enable the Appellate Authority to decide the matter completely and effectually. The petitioner being owner is vitally concerned with his property. It is at his stance that the notice was issued to the respondent no. 5 and order of demolition came to be passed.

6. The Additional Director of Panchayats, thus, committed serious illegality and material irregularity in declining the

petitioner's impleadment in the appeal. The petitioner is surely a proper party in the appeal.

7. The impugned order dated 18.11.2004 is, accordingly, set aside. The respondent No.5 is directed to implead the present petitioner as respondent No.3 in P.A. No. 70/2002. The Additional Director of Panchayats shall hear the parties including the petitioner and then decide the appeal.

8. The rule is made absolute in the aforesaid terms. No costs.

R.M. LODHA, J.

ssm.